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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,085

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Bernard Verrier

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EXAMINER

THOMAS, TIMOTHY P

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

08/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/562,085</p>	<p><b>Applicant(s)</b> VERRIER ET AL.</p>	
	<p><b>Examiner</b> TIMOTHY P. THOMAS</p>	<p><b>Art Unit</b> 1614</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: 9.
- Claim(s) rejected: 2 and 4-9.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Ardin Marschel/  
Supervisory Patent Examiner, Art Unit 1614

/Timothy P Thomas/  
Examiner, Art Unit 1614

Continuation of 3. NOTE: the introduction in claim 9 of "epithelial" cell membranes is new subject matter, not presented previously, which requires further consideration and/or search. Therefore the claim amendment is denied entry.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of claims 2 and 4-9 under 35 USC 112 2nd paragraph is withdrawn.

The clarification of the meaning of a linear n-alkanol to mean a linear alcohol, where the OH moiety can be substituted on any one of the carbon atoms is consistent with further limitations of claim 2 to the OH group in the 1-position or the 2-position.

This also overcomes the objection of claim 2 as being in improper dependent form

Continuation of 11. does NOT place the application in condition for allowance because: Applicant presents a series of arguments about the outstanding objections and rejections based on amendments to the claims that have not been entered. Except for the arguments addressed that follow, each of the arguments presented are moot because they do not apply to the claim set of record. Therefore, the prior objection to claim 9 and rejections not indicated under Item 5 above are maintained for the reasons of record.

With respect to the rejection under 35 USC 112, 1st paragraph of new matter in claim 9, applicant points out two passages under Item (1) on p.8 of the reply of 7/22/2008, which is persuasive for the phrase "partially or fully" activating CFTR channels. However, the arguments addressing Items (2)-(4) on pp. 8-9 of the reply are based on amendments to the claims, which have not been entered. The instant rejection is therefore maintained for the items (2)-(4), for the reasons of record.

With respect to the rejection under 35 USC 102, because of the new matter issue of record, the priority date accorded does not currently correspond to the date of the French priority application. Therefore the Marcet reference has not been eliminated as prior art.

Additionally, applicant argues three inventors from the Marcet reference are in common with the inventors of the instant application, and therefore the cited publication is the inventor's own publication relating to the subject matter of this patent application; based on the common inventors it is argued that Marcet cannot be prior art for any aspect of the current US patent application. This argument is not persuasive. The Marcet reference names two inventors that are not named as inventors of the instant application. Any difference between the inventive entity indicates the reference is "by another". The fact that the application and reference have one or more inventors in common is immaterial (see MPEP 2136.04, 1st section).